Hawthorn Housing Co-operative

Serious Complaints against the Director

POLICY IMPLEMENTATION CHECKLIST	
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This document can also be provided in large print, braille, audio or other non-written format, and in a variety of languages.

Policy on handling a serious complaint against the Director of the Co-operative

1. This policy sets out what the Scottish Housing Regulator (SHR) expects our Management Committee to do when dealing with a serious complaint or grievance against the senior member of staff (Director) of the Co-operative.

2. The SHR requires us to tell them when there is a serious complaint, investigation or disciplinary action relating to our senior staff member. These serious complaints do not arise often but because of their nature and sensitivity and potential impact on leadership arrangements, they have the potential to seriously damage the organisation. The SHR's experience of these cases has shown them that if our management committee does not have a clear process to deal with matters like this then the Management Committee can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This Policy sets out the SHRs regulatory expectations so that we can deal properly with this type of situation.

What is a defined as a serious complaint?

3. A serious complaint against the Director would include:
    - An allegation by a staff member of bullying or harassment, including sexual harassment
    - Inappropriate behaviour which may bring the Co-operative into disrepute
    - Allegation of fraud

The SHRs expectations

4. The Co-operative should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about our Director and the role of the Management Committee in those procedures. And the SHR expects us to be open and transparent about our decision making processes for handling such matters.

5. When dealing with a serious complaint or grievance about our Director, the SHR expects us to:
    - Tell them about it, in accordance with their guidance on notifiable events; and
    - Take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

Notify SHR

6. The SHR would not expect to be notified about minor grievances as these should be dealt with and resolved informally at a local level. Even serious complaints can be dealt with informally, but some serious complaints cannot be successfully resolved at the informal stage or if they are raised formally.

7. The Chair of our Management Committee will notify the Regulator if there is a serious complaint against the Director - for example serious allegations from an individual employee of bullying or harassment by the Director. The Chair should also tell the Regulator how the Management Committee intends to handle the complaint.

8. The Regulator recognises the highly sensitive nature of such serious complaints. If the Co-operative gives them information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of the Co-operative or the sector, or breach their legal obligation to disclose that information.

9. The SHR does not become involved in employment matters. Employment issues are for the Management Committee, as an employer, to resolve with the individual employee. But the SHR does need to be assured that the management committee will handle a serious complaint or grievance about our Director in a manner that is compliant with regulatory standards and the management committee will get external advice and support to help them to manage these situations and discharge its employment responsibilities fully and properly.

10. The Co-operative should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the Director and the role of the management committee in those procedures. We should be open and transparent about our decision-making processes for handling such matters.

11. When dealing with a serious complaint or grievance about the Director, we should:
    - tell the SHR about it, in accordance with their guidance on notifiable events; and
    - take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

Take prompt, independent and professional advice

12. The Regulator needs to be assured by our Management Committee that we are seeking independent professional advice to support how we handle the complaint. In normal circumstances it is the Director who provides advice to the management committee. But where it is the Director who is the subject of the serious complaint or grievance, s/he has a clear conflict of interest and cannot be involved in any way in managing the complaint made against them. In cases like this, our management committee will obtain external advice and support to manage the complaint.

13. The Management Committee needs to act quickly when a staff member raises a serious grievance about the Director. For instance, if the grievance is about bullying or aggressive behaviour then our management committee must take

immediate action. Given the likely sensitive nature of the grievance it should be handled carefully with independent, expert support and advice. The Co-operative will need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters. The Co-operative must ensure that its investigation of the complaint, and any subsequent action, complies with our legal duties including those in relation to equalities and human rights. This expertise will normally be provided by EVH.

14. Where a serious complaint has been made against the Director by a committee member or someone else who is not an employee, then the Regulator also expects our management committee to ensure that we are taking independent advice about how to handle the complaint and that the Director takes no part in any investigation other than co-operating with the investigator.

Have clear procedures

15. The Co-operative must have clear procedures (See Appendix 1) setting out how we will investigate serious complaints or grievances against the Director. The Regulator expects the Co-operative to apply the available good practice in dealing with the grievance and to meet their expectations as set out in their guidance (Handling a serious complaint against the Director/Chief Executive of an RSL).

The Management Committee's role

16. The Co-operative has a Human Resources (HR) sub-committee with delegated authority to deal with human resources matters or consider serious staff complaints. In the case of a serious complaint against the Director, the Regulator would always expect the Human Resources sub-committee to be informed and involved, rather than the Chairperson dealing with the complaint alone. The HR sub-committee is likely to be involved in hearing and deciding on the complaint / grievance. But in some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the sub-committee. Where there is an investigation then the sub-committee must oversee the investigation and record all decisions to ensure transparency.

17. Where the decision is taken to investigate a serious complaint, then the full management committee will be informed. However, it will not be told any of the detail, this must be kept confidential. This is to ensure:
    - The full management committee retains control over the Co-operative's affairs;
    - The details of the grievance remain confidential (the individuals at the centre of allegations have the right to confidentiality);
    - The full management committee knows the grievance is being dealt with by the HR sub-committee;
    - If the Co-operative needs to bring in outside help, then the full management committee is aware of the situation from the outset and can authorise any associated costs;

- The management committee can monitor if a pattern of grievances emerges and decide what action to take; and
- By keeping the substance of the grievance confidential then there is a clean route for any appeal to be heard by other members of the management committee who are untainted by detailed knowledge about the issue.

18. At the end of the process, the full management committee will be told about the outcome of the complaint/grievance.

The Regulator's involvement

19. If the Regulator has concerns about the action our management committee is proposing to take, or it appears that the Director is involved in advising the management committee or in handling the grievance, and then the Regulator may need to act to support the management committee to carry out its role effectively and properly in accordance with its regulatory standards.

Appendix 1 - Procedure for dealing with serious complaints against the Director

1. If a formal serious complaint or grievance is received concerning the Director, the Chairperson of the Co-operative will be informed immediately by telephone the day the notification is received. Formal normally means that the complaint has been submitted in writing. However, there may be occasions where a member of staff receives a verbal complaint about the Director. In this instance, the complainant will be asked to confirm their complaint in writing to ensure the issues raised are clearly stated.

2. Due to the sensitive nature of such situations, it would be inappropriate for any employee to be directly involved in the investigation or handling of a complaint/grievance against the Director. Access to independent advice must therefore be sought immediately by the Chairperson on behalf of the HR sub-committee. The Chairperson will immediately seek professional advice in the first instance by contacting EVH (0141 352 7435) or another independent advisor.

3. The Chairperson with assistance from of an independent advisor will in turn inform the Scottish Housing Regulator (SHR) of receipt of such a complaint through the landlord portal, in accordance with the SHR guidance note and the Co-operative's policy on Notifiable Events. This will be completed in strictest confidence by the Chairperson contacting SHR to gain access to the SHR's portal log in.
(www.scottishhousingregulator.gov.uk/portallogin)

4. Acknowledgement of the complaint/grievance should be sent to the Director as soon as is practicable, ideally within 3-5 working days. This will be completed by the independent advisor assisting the Chairperson with this task by sending the Director the attached pro forma letter – appendix 3.

5. The Chairperson will instruct the independent advisor to convene the Hearing at the HR sub-committee responsible for handling the complaint. This sub-committee will have a quorum of 3 members. One member will be designated chair for the purposes of handling the complaint. Members of the sub-committee will then be responsible for hearing and deciding on any action from the complaint/grievance.

6. Due to the highly sensitive nature of complaints at this level, it is vital that confidentiality is observed and maintained throughout. The full Management Committee may be told that a complaint/grievance has been received and is being dealt with but not about any of the detail, as described in section 15 above.

Independent advice and support

7. As employee matters are complex, such advice will be sought from an employment law specialist. The Chair or the HR Sub-Committee Convener will ask our solicitors, for such specialist employment advice.

Principles for hearing the complaint/grievance

8. The steps to be taken and matters to be considered during the hearing of any complaint/grievance are noted in the guidance at Appendix 2. The general principles which the sub-group must follow however, are:
    - Investigate the complaint and gather information and evidence – this may require a meeting with the complainant and other relevant parties/witnesses. It may be appropriate to commission an independent party (e.g. an employment law expert as referred to in section 7 above) to undertake the investigation, but all findings will be reported to the HR sub-committee.
    - Meet with the Director and allow them to put forward their case in response to the complaint/grievance.
    - Allow the Director to be accompanied at the meeting by a representative of their choosing.
    - Investigate further if required.
    - Adjourn the meeting if required to consider the information presented.
    - Notify the Director of the outcome decision and the right of appeal.

9. Following the investigation, hearing and consideration of the information presented, it should be borne in mind that the findings may lead to the instigation of disciplinary action which would activate the disciplinary process.

10. At all stages it is important to keep accurate and appropriate records to document and evidence decision making.

Updating of this procedure

11. The procedure will be reviewed as necessary in accordance with any future SHR guidance.

Appendix 2 - Complaint / Grievance Hearing

1. If it is decided that there is a case for the Director to answer, then a hearing should be arranged within 10 working days of receipt of the complaint. It is important that the employee is given the chance to put his or her case forward in response to the allegations, and that a fair process is followed when preparing for, and conducting, the hearing. Here, we set out some principles for the Co-operative to follow to ensure that disciplinary hearings are conducted fairly. Those conducting the hearing should always ensure that the basic principles of fairness are followed throughout the disciplinary procedure, and that they familiarise themselves with the principles in the ACAS code of practice.

2. The HR sub-committee will carry out an appropriate investigation into the complaint/grievance. This will normally be with the assistance of an independent advisor.

<u>Notification of a hearing</u>

3. The Director will be informed in writing within, at least five working days of the time, date and place of the hearing, who will be conducting the hearing and who else will be present. They will be advised of their right to be accompanied and asked for the name of the person who will accompany them. The Director will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where the Director is on long term absence and is unlikely to return within a reasonable period). Every reasonable effort will be made to accommodate the Director, in order for her/him to participate fully in the process.

4. The aim of any hearing is to reach a conclusion which is satisfactory to all parties. It is important to deal with such matters as quickly as possible to remove periods of uncertainty. Unless there are strong reasons why the complaint/grievance cannot be dealt with quickly (e.g. one of the parties is on holiday), the HR sub-committee should collect all the relevant information and aim to hold the hearing within 10 working days of receipt of the compliant.

<u>At the hearing</u>

5. At the hearing, the Chair of the HR sub-committee will outline to the Director the details of the complaint and findings from any subsequent investigations. The Director will be invited to discuss these findings and present their response to the detail of the complaint/grievance.

6. The meeting can be adjourned to consider information presented. It can be reconvened on the same day or if that is not appropriate further arrangements can be made for a new meeting. There is no need for the HR sub-committee to present their decision at this stage.

7. An independent person should be identified to take notes of the hearing.

After the investigation and meeting

8. After the hearing, the decision of the HR sub-committee should be conveyed in writing to the Director within seven working days of the date of the hearing. The decision letter must record:
    - Nature of the grievance/complaint raised
    - Date of the meeting and who was present
    - Key points made in discussions at the hearing
    - Names of any witnesses or other parties who provided information
    - Reasons for the decision
    - Outcome
    - Right of appeal

9. It is particularly important that the decision letter contains information which will enable all parties to understand how the conclusions and decision(s) were reached.

Potential outcomes from the hearing

10. Once the HR sub-committee is satisfied that it has come to a satisfactory conclusion it must then decide whether to:
    - Uphold the complaint
    - Partially uphold the complaint
    - Not uphold the complaint

11. If upholding or partially upholding, the sub-committee must decide the action to take against the Director. This can include no further action, verbal warning, written warning, final written warning or dismissal (in the case of gross misconduct).

Right of Appeal

12. If the Director is not satisfied with the outcome of the hearing, an appeal may be submitted in writing to the EVH JNC. The appeal should specifically outline the reasons why the Director believes the decision was unfair or unreasonable and/or why they believe the grievance procedure has not been properly applied. EVH will take over the administration of the process from this point and will notify the Chair of the outcome of the appeal hearing.

13. Grounds for appeal can include:
    - Procedural irregularities
    - Unfairness of the judgement
    - New evidence which could not have been available at the time of the original decision or was unreasonably withheld and which could have materially affected the outcome

Notification of Appeal

14. The Director will be informed in writing of the time, date and place of the hearing; who will be conducting the hearing and who else will be present. They should also be advised of their statutory right to be accompanied and asked for the name of the person who will accompany them. At least five working days' notice of a formal hearing should be given. In all cases the Director will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where they are on long term sickness absence and unlikely to return in a reasonable period).

Right to be accompanied

15. The Director has the right to be accompanied at all stages of the procedure by an appropriate work colleague or a trade union representative. Appropriate in this context means someone who does not have a conflict of interest, is not a witness to related events or involved in the facts of the complaint/grievance.

16. A work colleague who has been asked to accompany a member of staff to a formal grievance hearing is entitled to a reasonable amount of time away from their normal duties to fulfil this role. This should include not only time to attend the hearing but also time to familiarise themselves with the issues and confer with the employee both before and after the hearing.

17. No employee is required to agree a request to accompany a colleague to a hearing and no pressure should be brought to bear on them if they do not wish to do so.

18. The sub-committee tasked with dealing with the appeal may co-opt an independent advisor to attend hearing or appeal meetings.

19. The sub-committee may also wish to seek information from any other member of staff whose names have appeared as part of the grievance. These staff members also have the right to be accompanied at any meeting to discuss the grievance and must keep the matter confidential.

Right of delay

20. At all stages of the grievance and appeal procedure the Director can request to delay the hearing for up to five working days if their chosen companion is unavailable. The sub-committee should agree to this request unless there are exceptional reasons for not doing so. If the sub-committee, the Director or their companion cannot attend the meeting for a reason that was not reasonably foreseeable at the time the meeting was arranged, the meeting must be rearranged (i.e. illness on the day, or car breaking down). However, if either party does not attend the meeting and the failure could be reasonably foreseen, then the meeting will not be rearranged again.

Records

21. Detailed records should be kept detailing the nature of the complaint/grievance, the response given, any action taken and the reasons for it. An independent person should be appointed to prepare a comprehensive note of the grievance hearing. In certain circumstances some information may be withheld, for example, to protect a witness.

22. In accordance with the Co-operative's records retention schedules, records will be kept of all meetings detailing:
    - the nature of the complaint/grievance raised
    - a note of the meeting held to hear the grievance
    - the Co-operative's response
    - any action taken and the reasons for this
    - whether there was an appeal
    - a note of the appeal meeting
    - the outcome of the appeal meeting.

Appendix 3

Date

Name
Address

Dear

SERIOUS COMPLAINT AGAINST THE DIRECTOR, HAWTHORN HOUSING CO-OPERATIVE

I am writing to confirm that the Co-operative has received a serious complaint against you in relation to _____(details of the allegation to be summarised here).

I am acknowledging receipt of this complaint which was received on _____(date). Our formal policy and procedure for dealing with serious complaints against the Director has been activated (copy enclosed) and you will hear from the Co-operative by _____ (date) with regard to how the complaint will be dealt with.

If required, you have the right to be accompanied should there be a full investigation.

Yours sincerely

Chairperson
Hawthorn Housing Co-operative